



Rep. Lawrence M. Walsh, Jr.

Filed: 3/26/2014

09800HB3882ham001

LRB098 15452 HLH 57711 a

1 AMENDMENT TO HOUSE BILL 3882

2 AMENDMENT NO. _____. Amend House Bill 3882 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Illinois Certainty and Fairness in Local Tax Sourcing Act.

6 Section 5. Sourcing local taxes. In allocating or sourcing
7 any municipal, county, special district, or other local
8 retailers' occupation tax or the local share of the State's
9 retailers' occupation tax, for sales occurring in this State,
10 the sales location for such allocation or sourcing purposes
11 shall be the office location where the order for the purchase
12 of the tangible personal property is accepted by the retailer
13 or its authorized representative, except as provided elsewhere
14 in this Act. In determining the acceptance location for a sale,
15 the office where the order is first received by the retailer or
16 its authorized representative shall be presumptively deemed

1 the acceptance location, unless the retailer or the Department
2 of Revenue clearly proves that the final event or activity
3 giving rise to the retailer's acceptance of the order, or the
4 binding contract for such sale, occurred at a different office
5 location. This final event or activity giving rise to the
6 retailer's acceptance of the order, or the binding contract for
7 the sale, refers to the single identifiable event or action by
8 the retailer or its authorized representative that, when it
9 occurs, it creates a binding sale without any further
10 acceptance or approval action by the retailer or its authorized
11 representative.

12 Section 10. Electronic receipt. For purposes of this Act,
13 if the order is received by electronic means, including, but
14 not limited to, e-mail or facsimile transmission, and the first
15 electronic receipt of the order is not addressed to or
16 otherwise identified with a specific office location of the
17 retailer or its authorized representative, then the order shall
18 be deemed first received at the office location of the retailer
19 or its authorized representative to whom the addressee of the
20 electronic order is primarily assigned or stationed, but in the
21 event such addressee has no identifiable office location then
22 the order shall be deemed first received at the office location
23 that first records the receipt of such electronic order.

24 Section 15. Definitions. For purposes of this Act:

1 "Office location" means a temporary or permanent
2 structure, or part thereof, held out to the public as being an
3 office of the retailer or its authorized representative, where
4 at least one individual performs authorized services for the
5 retailer or its authorized representative with respect to the
6 purchase of tangible personal property from the retailer.

7 "Order" means the request (in writing, orally, or
8 electronically) by the purchaser to buy tangible personal
9 property.

10 Section 20. Multiple office locations. If a retailer has
11 more than one office location in Illinois at which order
12 receipt or acceptance services are performed for the retailer,
13 then an office location is not a sales location unless the
14 office location also has one or more individuals who are
15 employees or authorized representatives of the retailer who, on
16 a regular basis, perform authorized services at that location
17 exclusively on behalf of the retailer or any of the retailer's
18 affiliates that relate in some fashion, other than simply order
19 receipt and acceptance, to order processing or the overall
20 sales process for that sale, including, but not limited to,
21 order input, order review, credit review, credit approval,
22 price verification, shipment period verification, price
23 approval, providing price quotes, customer interaction,
24 billing, payment receipt, inventory verification, inventory
25 procurement, accepting returns, or customer service. If an

1 office location does not meet these requirements, then the
2 retailer's primary office location in this State shall be
3 deemed to be the sales location for the sale. The term "primary
4 office location" means the office location of the retailer in
5 this State where the majority of the retailer's employees,
6 officers, and representatives in this State who are involved in
7 the retailer's order processing or the sales approval process
8 are located, and the term "affiliate" means an entity in which
9 the retailer owns, either directly or indirectly, 50% or more
10 of that entity's outstanding voting stock or equitable
11 controlling interest.

12 Section 25. Physical delivery location. Except as
13 otherwise provided in this Act, neither the delivery location
14 nor the location of the acceptance of the tangible personal
15 property by the purchaser (either before or after inspection or
16 installation) shall determine the sales location for
17 allocation or sourcing purposes under this Act.

18 Section 30. Special rule. Notwithstanding provision of law
19 to the contrary, for purposes of this Act, the sales location
20 for the allocation or sourcing of any municipal, county,
21 special district, or other local retailers' occupation tax, or
22 the local share of the State's retailers' occupation tax, shall
23 be as follows:

24 (1) if the acceptance of the order by the retailer

1 occurs outside of the State (whether or not the receipt of
2 the order occurs within the State), then the sales location
3 shall be deemed outside of the State, and no local sourcing
4 of retailers' occupation tax applies, except when the
5 tangible personal property that is being sold has been
6 specifically identified in the sales contract and is in the
7 inventory of the retailer at a location within the State at
8 the time of sale (or is subsequently produced by the
9 retailer at a location in this State); in that event, the
10 inventory location shall be deemed the sales location;

11 (2) if the retailer sends to the purchaser a complete
12 and unconditional offer to sell, then the sales location
13 shall be the office location where the retailer or its
14 authorized representative first receives the purchaser's
15 acceptance of that offer;

16 (3) for keep full or similar requirements contracts
17 where the retailer agrees to supply tangible personal
18 property to a purchaser on a continuous basis until
19 notified to stop by the purchaser, the sales location shall
20 be the office location where the retailer or its authorized
21 representative receives the initial order to start the
22 deliveries under the contract, provided that, if the
23 contract is a written contract not requiring a separate
24 initial order to start the continuous supply process, then
25 the sales location shall be the office location where the
26 retailer or its authorized representative signed the

1 contract;

2 (4) for sales accepted in Illinois under a long-term
3 blanket or master contract that (though definite as to
4 price and quantity) must be implemented by the purchaser's
5 placing of specific orders when goods are wanted, the
6 office location of the retailer or its authorized
7 representative at which such subsequent specific orders
8 are received (rather than the place where the seller signed
9 the master contract) shall be the sales location;

10 (5) if the order for the purchase of tangible personal
11 property is received by the retailer or its authorized
12 representative, and, prior to final acceptance of the order
13 by the retailer or its authorized representative, the
14 ordered tangible personal property is delivered or shipped
15 from the inventory of the retailer at a location in this
16 State, then the sales location shall be the retailer's or
17 its authorized representative's office location in this
18 State where the purchase order for such tangible personal
19 property is first received or if such order is first
20 received at an office location outside the State then the
21 sales location shall be the inventory location from which
22 the tangible personal property was shipped or delivered;
23 and

24 (6) in those situations where the order for the
25 purchase of tangible personal property is placed in person
26 by the purchaser at a retailer's retail sales location and

1 the delivery or shipment of the property occurs from that
2 location, then that retail sales location shall be deemed
3 the sales location for that sale even if the acceptance of
4 the order by the retailer occurs at a different office
5 location.

6 Section 35. Mobile or temporary sales locations.
7 Notwithstanding any provision of law to the contrary, for
8 purposes of this Act:

9 (1) where the initial receipt of a purchase order from
10 a purchaser is made by a retailer or its authorized
11 representative during an in person meeting with the
12 purchaser and (A) a vehicle, vessel, aircraft or other
13 mobile form of transportation is used to facilitate that
14 meeting, and delivery of the property is immediately made
15 from uncommitted inventory located in or on that mobile
16 form of transportation, then the sales location shall be
17 deemed to be the location of the mobile transportation at
18 the time of the sale, or (B) the meeting occurs at a
19 temporary sales location, such as a tent, outdoor fair, or
20 other location that is not contained within a structure,
21 and delivery of the property is made immediately from
22 uncommitted inventory located at that sales location, then
23 the sales location shall be deemed to be the temporary sale
24 location; and

25 (2) where a purchase order is received from the

1 purchaser by a salesman or other authorized individual
2 acting on behalf of a retailer, and that purchase order (A)
3 is accepted by by those individuals on behalf of the
4 retailer while traveling on business or for other reasons,
5 (B) involves the future delivery of the property being
6 sold, and (C) is not accepted at an office location or a
7 temporary sales office of the retailer when the acceptance
8 occurs, then the sales location shall be deemed to be the
9 office location where the individual who receives the
10 purchase order is primarily assigned or stationed, unless
11 item (1) of Section 30 applies.

12 Section 40. No office or mobile or temporary sales location
13 in State. If the final event or activity giving rise to the
14 retailer's acceptance of the order, or the binding contract for
15 a sale, occurs in this State and a retailer does not have a
16 office location or a mobile or temporary sales location in this
17 State, then the sales location shall be deemed the location
18 where such acceptance or binding contract occurs.

19 Section 45. Minerals. Except as otherwise specifically
20 provided by law, for the purpose of determining allocation of
21 tax to a the local government unit, a retail sale by a producer
22 of coal or other mineral mined in Illinois is a sale at retail
23 at the place where the coal or other mineral mined in Illinois
24 is extracted from the earth. With respect to minerals (i) the

1 term "extracted from the earth" means the location at which the
2 coal or other mineral is extracted from the mouth of the mine,
3 and (ii) a "mineral" includes not only coal, but also oil,
4 sand, stone taken from a quarry, gravel and any other thing
5 commonly regarded as a mineral and extracted from the earth.
6 This Section does not apply to coal or another mineral when it
7 is delivered or shipped by the seller to the purchaser at a
8 point outside Illinois so that the sale is exempt under the
9 United States Constitution as a sale in interstate or foreign
10 commerce.

11 Section 50. Out-of-State delivery. When property is sold
12 for delivery or shipment by the seller or its authorized
13 representative to the purchaser at a point outside this state,
14 which results in no retailer's occupation tax due on the sale,
15 then no local sourcing or allocation of state or local
16 retailers' occupation tax applies.

17 Section 55. Applicability. This Act applies to sales made
18 on or after its effective date and to sales made during past
19 periods not yet closed by any applicable limitations period.
20 The retailer may apply the changes made by this Act in the
21 allocation of its past sales only to the extent it does not
22 change the retailer's previous filing location for that sale.

23 Section 99. Effective date. This Act takes effect upon

1 becoming law.".